



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

LEGISLATIVE PROPOSAL (FL-2007-13) *REPEAL FAMILY CODE §7643 RE: INSPECTION OF PATERNITY FILES*

TO: Larry Doyle, Chief Legislative Counsel, State Bar Office of Governmental Affairs

FROM: George Seide

DATE: August 31, 2006

RE: Repeal of Family Code §7643

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee/Standing Committee: August 14, 2006
Approval vote: Unanimous

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DIGEST: The purpose of this legislation is to repeal Family Code §7643.

PURPOSE:

1. Family Code §7643 states that Paternity cases may be held in closed court and that Paternity files are confidential subject to inspection only by the parties and their attorneys.
2. The problem with the existing law is that it is outdated; the statute relates back to a time when it was considered to be immoral to have a child out of wedlock, which is not the case

today. The existing law prevents an attorney from accessing a paternity file before being retained to check on the status of the case. The existing law even prevents the attorney of record from having his attorney service obtain documents from the court file since the clerks will not allow an attorney service to view a confidential file even if they are presented with a written authorization signed by the attorney or party. However, Child Support Services Department cases in which they file to establish paternity (County of Los Angeles vs. John Doe) are not considered to be confidential court files. This inconsistently creates a 2-tier system in which private paternity cases are confidential, but County paternity cases are not confidential and are therefore open to inspection by the public. If CSSD is requested to enforce a child support order made in a family law matter, even this agency of the State Government does not have access to the confidential court file. CSSD may not send a clerk or attorney service to secure copies of documents necessary to their outreach enforcement action. If the party does not have copies and cannot go personally to secure those needed documents, CSSD cannot proceed.

3. The repeal of Family Code §7643 will allow all paternity court files to be treated the same way that dissolution files are which is open to the public and accessible to all subject to a motion to have the complete file or some of the documents in the file sealed or redacted. This will allow a party unable to take time off from work or with a physical disability due to illness or injury to have a friend or relative go to the court to get documents from the file; allow an attorney to view the court file before being retained; and allow an attorney service or non-attorney employees of prospective counsel to obtain documents from the court file.

ILLUSTRATIONS: A man living and working in Sacramento tried to renew his drivers license and discovers that it has been suspended for his failure to pay child support. He is told to call the Child Support Services Department (CSSD) in Encino where he is told that they are enforcing the various orders of child support that were made in the Van Nuys Superior Court over the 10 years that he was ordered to pay child support until the children turned 18 and graduated from high school. He does not have copies of any of the court orders, minute orders, of the Judgment of Paternity. He says that his wages were garnished for most of the 10 years so that he does not owe as much as his ex-wife and the CSSD are alleging. He calls an attorney in Los Angeles who wants to order a copy of the complete court file before being retained to see if he can help the prospective client, but the attorney cannot do so because of the current law. Currently, the client would have to drive/fly from Sacramento to Los Angeles to go to the Van Nuys Superior Court or the archives downtown in order to view the file and obtain copies for the attorney. Once the law is repealed, the attorney can have his attorney service order a copy of the court file.

DOCUMENTATION: None.

HISTORY: No similar bills are known to have been introduced.

PENDING LITIGATION: We are not aware of any pending litigation which would be impacted by the repeal of Family Code §7643.

LIKELY SUPPORT AND OPPOSITION: It is not anticipated that this legislation will be controversial. Most attorneys and parties to paternity actions would prefer the convenience of

having the court files open and available to everyone. There are a small minority of attorneys and individuals who feel that all dissolution files should be confidential. They would probably prefer that paternity files remain confidential as well.

FISCAL IMPACT: None foreseen, except for the minimal additional time that court clerks would have to spend to pull the paternity files requested and copy documents from them.

GERMANENESS: The repeal of Family Code §7643 is reasonable and necessary to improve the quality and cost effectiveness of attorney representation of individuals in paternity cases, which is within the expertise of members of the Family Law Section Executive Committee. If the only way for an attorney to obtain copies from a court paternity file is to physically go to the courthouse this unnecessarily increases the cost of legal services for the handling of these cases.

TEXT OF PROPOSAL

SECTION 1. Section 7643 of the Family Code is repealed.

~~7643. (a) Notwithstanding any other law concerning public hearings and records, a hearing or trial held under this part may be held in closed court without admittance of any person other than those necessary to the action or proceeding. Except as provided in subdivision (b), all papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in a public agency or elsewhere, are subject to inspection only in exceptional cases upon an order of the court for good cause shown.~~

~~(b) Papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys.~~